

COLORADO REVISED STATUTES

\*\*\* This document reflects changes current through all laws passed at the First Regular Session of the Sixty-Ninth General Assembly of the State of Colorado (2013) \*\*\*

TITLE 25. HEALTH

ADMINISTRATION

ARTICLE 1.5. POWERS AND DUTIES OF THE DEPARTMENT OF PUBLIC HEALTH AND ENVIRONMENT

PART 1. GENERAL POWERS AND DUTIES

C.R.S. 25-1.5-106 (2013)

25-1.5-106. Medical marijuana program - powers and duties of state health agency - rules - medical review board - medical marijuana program cash fund - created - repeal

(1) Legislative declaration. (a) The general assembly hereby declares that it is necessary to implement rules to ensure that patients suffering from legitimate debilitating medical conditions are able to safely gain access to medical marijuana and to ensure that these patients:

(I) Are not subject to criminal prosecution for their use of medical marijuana in accordance with section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency; and

(II) Are able to establish an affirmative defense to their use of medical marijuana in accordance with section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency.

(b) The general assembly hereby declares that it is necessary to implement rules to prevent persons who do not suffer from legitimate debilitating medical conditions from using section 14 of article XVIII of the state constitution as a means to sell, acquire, possess, produce, use, or transport marijuana in violation of state and federal laws.

(2) Definitions. In addition to the definitions set forth in section 14 (1) of article XVIII of the state constitution, as used in this section, unless the context otherwise requires:

(a) "Bona fide physician-patient relationship", for purposes of the medical marijuana program, means:

(I) A physician and a patient have a treatment or counseling relationship, in the course of which the physician has completed a full assessment of the patient's medical history and current medical condition, including an appropriate personal physical examination;

(II) The physician has consulted with the patient with respect to the patient's debilitating medical condition before the patient applies for a registry identification card; and

(III) The physician is available to or offers to provide follow-up care and treatment to the patient, including but not limited to patient examinations, to determine the efficacy of the use of medical marijuana as a treatment of the patient's debilitating medical condition.

(b) "Executive director" means the executive director of the state health agency.

(c) "In good standing", with respect to a physician's license, means:

(I) The physician holds a doctor of medicine or doctor of osteopathic medicine degree from an accredited medical school;

(II) The physician holds a valid license to practice medicine in Colorado that does not contain a restriction or condition that prohibits the recommendation of medical marijuana or for a license issued prior to July 1, 2011, a valid, unrestricted and unconditioned license; and

(III) The physician has a valid and unrestricted United States department of justice federal drug enforcement administration controlled substances registration.

(d) "Medical marijuana program" means the program established by section 14 of article XVIII of the state constitution and this section.

(d.5) "Primary caregiver" means a natural person, other than the patient or the patient's physician, who is eighteen years of age or older and has significant responsibility for managing the well-being of a patient who has a debilitating medical condition.

(e) "Registry identification card" means the nontransferable confidential registry identification card issued by the state health agency to patients and primary caregivers pursuant to this section.

(f) "State health agency" means the public health-related entity of state government designated by the governor by executive order pursuant to section 14 of article XVIII of the state constitution.

(3) Rule-making. (a) The state health agency shall, pursuant to section 14 of article XVIII of the state constitution, promulgate rules of administration concerning the implementation of the medical marijuana program that specifically govern the following:

(I) The establishment and maintenance of a confidential registry of patients who have applied for and are entitled to receive a registry identification card. The confidential registry of patients may be used to determine whether a physician should be referred to the Colorado board of medical examiners for a suspected violation of section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (5) of this section, or the rules promulgated by the state health agency pursuant to this subsection (3).

(II) The development by the state health agency of an application form and the process for making the form available to residents of this state seeking to be listed on the confidential registry of patients who are entitled to receive a registry identification card;

(III) The verification by the state health agency of medical information concerning patients who have applied for a registry identification card or for renewal of a registry identification card;

(IV) The development by the state health agency of a form that constitutes "written documentation" as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient;

(V) The conditions for issuance and renewal, and the form, of the registry identification cards issued to patients, including but not limited to standards for ensuring that the state health agency issues a registry identification card to a patient only if he or she has a bona fide physician-patient relationship with a physician in good standing and licensed to practice medicine in the state of Colorado;

(VI) Communications with law enforcement officials about registry identification cards that have been suspended when a patient is no longer diagnosed as having a debilitating medical condition;

(VII) The manner in which the state health agency may consider adding debilitating medical conditions to the list of debilitating medical conditions contained in section 14 of article XVIII of the state constitution; and

(VIII) A waiver process to allow a homebound patient who is on the registry to have a primary caregiver transport the patient's medical marijuana from a licensed medical marijuana center to the patient.

(b) The state health agency may promulgate rules regarding the following:

(I) What constitutes "significant responsibility for managing the well-being of a patient"; except that the act of supplying medical marijuana or marijuana paraphernalia, by itself, is insufficient to constitute "significant responsibility for managing the well-being of a patient";

(II) The development of a form for a primary caregiver to use in applying to the registry, which form shall require, at a minimum, that the applicant provide his or her full name, home address, date of birth, and an attestation that the applicant has a significant responsibility for managing the well-being of the patient for whom he or she is designated as the primary caregiver and that he or she understands and will abide by section 14 of article XVIII of the state constitution, this section, and the rules promulgated by the state health agency pursuant to this section;

(III) The development of a form that constitutes "written documentation", as defined and used in section 14 of article XVIII of the state constitution, which form a physician shall use when making a medical marijuana recommendation for a patient; and

(IV) The grounds and procedure for a patient to change his or her designated primary caregiver.

(c) Repealed.

(4) Notwithstanding any other requirements to the contrary, notice issued by the state health agency for a rule-making hearing pursuant to section 24-4-103, C.R.S., for rules concerning the medical marijuana program shall be sufficient if the state health agency provides the notice no later than forty-five days in advance of the rule-making hearing in at least one publication in a newspaper of general distribution in the state and posts the notice on the state health agency's web site; except that emergency rules pursuant to section 24-4-103 (6), C.R.S., shall not require advance notice.

(5) Physicians. A physician who certifies a debilitating medical condition for an applicant to the medical marijuana program shall comply with all of the following requirements:

(a) The physician shall have a valid and active license to practice medicine, which license is in good standing.

(b) After a physician, who has a bona fide physician-patient relationship with the patient applying for the medical marijuana program, determines, for the purposes of making a recommendation, that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana, the physician shall certify to the state health agency that the patient has a debilitating medical condition and that the patient may benefit from the use of medical marijuana. If the physician certifies that the patient would benefit from the use of medical marijuana based on a chronic or debilitating disease or medical condition, the physician shall specify the chronic or debilitating disease or medical condition and, if known, the cause or source of the chronic or debilitating disease or medical condition.

(c) The physician shall maintain a record-keeping system for all patients for whom the physician has

recommended the medical use of marijuana, and, pursuant to an investigation initiated pursuant to section 12-36-118, C.R.S., the physician shall produce such medical records to the Colorado state board of medical examiners after redacting any patient or primary caregiver identifying information.

(d) A physician shall not:

(I) Accept, solicit, or offer any form of pecuniary remuneration from or to a primary caregiver, distributor, or any other provider of medical marijuana;

(II) Offer a discount or any other thing of value to a patient who uses or agrees to use a particular primary caregiver, distributor, or other provider of medical marijuana to procure medical marijuana;

(III) Examine a patient for purposes of diagnosing a debilitating medical condition at a location where medical marijuana is sold or distributed; or

(IV) Hold an economic interest in an enterprise that provides or distributes medical marijuana if the physician certifies the debilitating medical condition of a patient for participation in the medical marijuana program.

(6) Enforcement. (a) If the state health agency has reasonable cause to believe that a physician has violated section 14 of article XVIII of the state constitution, paragraph (a), (b), or (c) of subsection (5) of this section, or the rules promulgated by the state health agency pursuant to subsection (2) of this section, the state health agency may refer the matter to the state board of medical examiners created in section 12-36-103, C.R.S., for an investigation and determination.

(b) If the state health agency has reasonable cause to believe that a physician has violated paragraph (d) of subsection (5) of this section, the state health agency shall conduct a hearing pursuant to section 24-4-104, C.R.S., to determine whether a violation has occurred.

(c) Upon a finding of unprofessional conduct pursuant to section 12-36-117 (1) (mm), C.R.S., by the state board of medical examiners or a finding of a violation of paragraph (d) of subsection (5) of this section by the state health agency, the state health agency shall restrict a physician's authority to recommend the use of medical marijuana, which restrictions may include the revocation or suspension of a physician's privilege to recommend medical marijuana. The restriction shall be in addition to any sanction imposed by the state board of medical examiners.

(d) When the state health agency has objective and reasonable grounds to believe and finds, upon a full investigation, that a physician has deliberately and willfully violated section 14 of article XVIII of the state constitution or this section and that the public health, safety, or welfare imperatively requires emergency action, and the state health agency incorporates those findings into an order, the state health agency may summarily suspend the physician's authority to recommend the use of medical marijuana pending the proceedings set forth in paragraphs (a) and (b) of this subsection (6). A hearing on the order of summary suspension shall be held no later than thirty days after the issuance of the order of summary suspension, unless a longer time is agreed to by the parties, and an initial decision in accordance with section 24-4-105 (14), C.R.S., shall be rendered no later than thirty days after the conclusion of the hearing concerning the order of summary suspension.

(7) Primary caregivers. (a) A primary caregiver may not delegate to any other person his or her authority to provide medical marijuana to a patient nor may a primary caregiver engage others to assist in providing medical marijuana to a patient.

(b) Two or more primary caregivers shall not join together for the purpose of cultivating medical marijuana.

(c) Only a medical marijuana center with an optional premises cultivation license, a medical marijuana-

infused products manufacturing operation with an optional premises cultivation license, or a primary caregiver for his or her patients or a patient for himself or herself may cultivate or provide marijuana and only for medical use.

(d) A primary caregiver shall provide to a law enforcement agency, upon inquiry, the registry identification card number of each of his or her patients. The state health agency shall maintain a registry of this information and make it available twenty-four hours per day and seven days a week to law enforcement for verification purposes. Upon inquiry by a law enforcement officer as to an individual's status as a patient or primary caregiver, the state health agency shall check the registry. If the individual is not registered as a patient or primary caregiver, the state health agency may provide that response to law enforcement. If the person is a registered patient or primary caregiver, the state health agency may not release information unless consistent with section 14 of article XVIII of the state constitution. The state health agency may promulgate rules to provide for the efficient administration of this paragraph (d).

(e) A primary caregiver who cultivates medical marijuana for his or her patients shall register the location of his or her cultivation operation with the state medical marijuana licensing authority and provide the registration identification number of each patient to the state licensing authority. The information provided to the state medical marijuana licensing authority pursuant to this paragraph (e) shall not be provided to the public and shall be confidential. The state licensing authority shall verify the location of a primary caregiver cultivation operation to a local government or law enforcement agency upon receiving an address-specific request for verification. The location of the cultivation operation shall comply with all applicable local laws, rules, or regulations.

(8) Patient - primary caregiver relationship. (a) A person shall be listed as a primary caregiver for no more than five patients on the medical marijuana program registry at any given time; except that the state health agency may allow a primary caregiver to serve more than five patients in exceptional circumstances. In determining whether exceptional circumstances exist, the state health agency may consider the proximity of medical marijuana centers to the patient. A primary caregiver shall maintain a list of his or her patients including the registry identification card number of each patient at all times.

(b) A patient shall have only one primary caregiver at any given time.

(c) A patient who has designated a primary caregiver for himself or herself may not be designated as a primary caregiver for another patient.

(d) A primary caregiver may not charge a patient more than the cost of cultivating or purchasing the medical marijuana, but may charge for caregiver services.

(e) (I) The state health agency shall maintain a secure and confidential registry of available primary caregivers for those patients who are unable to secure the services of a primary caregiver.

(II) An existing primary caregiver may indicate at the time of registration whether he or she would be willing to handle additional patients and waive confidentiality to allow release of his or her contact information to physicians or registered patients only.

(III) An individual who is not registered but is willing to provide primary caregiving services may submit his or her contact information to be placed on the primary caregiver registry.

(IV) A patient-primary caregiver arrangement secured pursuant to this paragraph (e) shall be strictly between the patient and the potential primary caregiver. The state health agency, by providing the information required by this paragraph (e), shall not endorse or vouch for a primary caregiver.

(V) The state health agency may make an exception, based on a request from a patient, to paragraph (a) of this subsection (8) limiting primary caregivers to five patients. If the state health agency makes an

exception to the limit, the state health agency shall note the exception on the primary caregiver's record in the registry.

(f) At the time a patient applies for inclusion on the confidential registry, the patient shall indicate whether the patient intends to cultivate his or her own medical marijuana, both cultivate his or her own medical marijuana and obtain it from either a primary caregiver or licensed medical marijuana center, or obtain it from either a primary caregiver or a licensed medical marijuana center. If the patient elects to use a licensed medical marijuana center, the patient shall register the primary center he or she intends to use.

(9) Registry identification card required - denial - revocation - renewal. (a) To be considered in compliance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency, a patient or primary caregiver shall have his or her registry identification card in his or her possession at all times that he or she is in possession of any form of medical marijuana and produce the same upon request of a law enforcement officer to demonstrate that the patient or primary caregiver is not in violation of the law; except that, if more than thirty-five days have passed since the date the patient or primary caregiver filed his or her medical marijuana program application and the state health agency has not yet issued or denied a registry identification card, a copy of the patient's or primary caregiver's application along with proof of the date of submission shall be in the patient's or primary caregiver's possession at all times that he or she is in possession of any form of medical marijuana until the state health agency issues or denies the registry identification card. A person who violates section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency may be subject to criminal prosecution for violations of section 18-18-406, C.R.S.

(b) The state health agency may deny a patient's or primary caregiver's application for a registry identification card or revoke the card if the state health agency, in accordance with article 4 of title 24, C.R.S., determines that the physician who diagnosed the patient's debilitating medical condition, the patient, or the primary caregiver violated section 14 of article XVIII of the state constitution, this section, or the rules promulgated by the state health agency pursuant to this section; except that, when a physician's violation is the basis for adverse action, the state health agency may only deny or revoke a patient's application or registry identification card when the physician's violation is related to the issuance of a medical marijuana recommendation.

(c) A patient or primary caregiver registry identification card shall be valid for one year and shall contain a unique identification number. It shall be the responsibility of the patient or primary caregiver to apply to renew his or her registry identification card prior to the date on which the card expires. The state health agency shall develop a form for a patient or primary caregiver to use in renewing his or her registry identification card.

(d) If the state health agency grants a patient a waiver to allow a primary caregiver to transport the patient's medical marijuana from a medical marijuana center to the patient, the state health agency shall designate the waiver on the patient's registry identification card.

(e) A homebound patient who receives a waiver from the state health agency to allow a primary caregiver to transport the patient's medical marijuana to the patient from a medical marijuana center shall provide the primary caregiver with the patient's registry identification card, which the primary caregiver shall carry when the primary caregiver is transporting the medical marijuana. A medical marijuana center may provide the medical marijuana to the primary caregiver for transport to the patient if the primary caregiver produces the patient's registry identification card.

(10) Renewal of patient identification card upon criminal conviction. Any patient who is convicted of a criminal offense under article 18 of title 18, C.R.S., sentenced or ordered by a court to drug or substance abuse treatment, or sentenced to the division of youth corrections, shall be subject to immediate renewal of his or her patient registry identification card, and the patient shall apply for the renewal based upon a recommendation from a physician with whom the patient has a bona fide physician-patient relationship.

(11) A parent who submits a medical marijuana registry application for his or her child shall have his or her signature notarized on the application.

(12) Use of medical marijuana. (a) The use of medical marijuana is allowed under state law to the extent that it is carried out in accordance with the provisions of section 14 of article XVIII of the state constitution, this section, and the rules of the state health agency.

(b) A patient or primary caregiver shall not:

(I) Engage in the medical use of marijuana in a way that endangers the health and well-being of a person;

(II) Engage in the medical use of marijuana in plain view of or in a place open to the general public;

(III) Undertake any task while under the influence of medical marijuana, when doing so would constitute negligence or professional malpractice;

(IV) Possess medical marijuana or otherwise engage in the use of medical marijuana in or on the grounds of a school or in a school bus;

(V) Engage in the use of medical marijuana while:

(A) In a correctional facility or a community corrections facility;

(B) Subject to a sentence to incarceration; or

(C) In a vehicle, aircraft, or motorboat;

(VI) Operate, navigate, or be in actual physical control of any vehicle, aircraft, or motorboat while under the influence of medical marijuana; or

(VII) Use medical marijuana if the person does not have a debilitating medical condition as diagnosed by the person's physician in the course of a bona fide physician-patient relationship and for which the physician has recommended the use of medical marijuana.

(c) A person shall not establish a business to permit patients to congregate and smoke or otherwise consume medical marijuana.

(13) Limit on cultivation of medical marijuana. Only registered patients, licensed primary caregivers, medical marijuana-infused products manufacturing operations with an optional premises cultivation license, and licensed medical marijuana centers with optional premises cultivation licenses may cultivate medical marijuana.

(14) Affirmative defense. If a patient or primary caregiver raises an affirmative defense as provided in section 14 (4) (b) of article XVIII of the state constitution, the patient's physician shall certify the specific amounts in excess of two ounces that are necessary to address the patient's debilitating medical condition and why such amounts are necessary. A patient who asserts this affirmative defense shall waive confidentiality privileges related to the condition or conditions that were the basis for the recommendation. If a patient, primary caregiver, or physician raises an exception to the state criminal laws as provided in section 14 (2) (b) or (2) (c) of article XVIII of the state constitution, the patient, primary caregiver, or physician waives the confidentiality of his or her records related to the condition or conditions that were the basis for the recommendation maintained by the state health agency for the medical marijuana program. Upon request of a law enforcement agency for such records, the state health agency shall only provide records pertaining to the individual raising the exception, and shall redact all other patient, primary

caregiver, or physician identifying information.

(15) (a) Except as provided in paragraph (b) of this subsection (15), the state health agency shall establish a basic fee that shall be paid at the time of service of any subpoena upon the state health agency, plus a fee for meals and a fee for mileage at the rate prescribed for state officers and employees in section 24-9-104, C.R.S., for each mile actually and necessarily traveled in going to and returning from the place named in the subpoena. If the person named in the subpoena is required to attend the place named in the subpoena for more than one day, there shall be paid, in advance, a sum to be established by the state health agency for each day of attendance to cover the expenses of the person named in the subpoena.

(b) The subpoena fee established pursuant to paragraph (a) of this subsection (15) shall not be applicable to any federal, state, or local governmental agency.

(16) Fees. (a) The state health agency may collect fees from patients who, pursuant to section 14 of article XVIII of the state constitution, apply to the medical marijuana program for a registry identification card for the purpose of offsetting the state health agency's direct and indirect costs of administering the program. The amount of the fees shall be set by rule of the state health agency. The amount of the fees set pursuant to this section shall reflect the actual direct and indirect costs of the state licensing authority in the administration and enforcement of this article so that the fees avoid exceeding the statutory limit on uncommitted reserves in administrative agency cash funds as set forth in section 24-75-402 (3), C.R.S. The state health agency shall not assess a medical marijuana registry application fee to an applicant who demonstrates, pursuant to a copy of the applicant's state tax return certified by the department of revenue, that the applicant's income does not exceed one hundred eighty-five percent of the federal poverty line, adjusted for family size. All fees collected by the state health agency through the medical marijuana program shall be transferred to the state treasurer who shall credit the same to the medical marijuana program cash fund, which fund is hereby created.

(b) Repealed.

(17) Cash fund. (a) The medical marijuana program cash fund shall be subject to annual appropriation by the general assembly to the state health agency for the purpose of establishing, operating, and maintaining the medical marijuana program. All moneys credited to the medical marijuana program cash fund and all interest derived from the deposit of such moneys that are not expended during the fiscal year shall be retained in the fund for future use and shall not be credited or transferred to the general fund or any other fund.

(b) (Deleted by amendment, L. 2010, (HB 10-1284), ch. 355, p. 1677, § 2, effective July 1, 2010.)

(b.5) Notwithstanding any provision of paragraph (a) of this subsection (17) to the contrary, on June 30, 2011, the state treasurer shall deduct three million dollars from the medical marijuana program cash fund and transfer such sum to the general fund.

(c) Repealed.

(18) This section is repealed, effective July 1, 2019.

HISTORY: Source: L. 2003: Entire article added with relocations, p. 686, § 2, effective July 1. L. 2009: (3) amended, (SB 09-208), ch. 149, p. 624, § 20, effective April 20. L. 2010: Entire section amended, (SB 10-109), ch. 356, p. 1691, § 1, effective June 7; (17)(b.5) added, (HB 10-1388), ch. 362, p. 1716, § 1, effective June 7; entire section amended, (HB 10-1284), ch. 355, p. 1677, § 2, effective July 1. L. 2011: (2)(c)(II), (5)(a), and (16)(a) amended and (7)(e) added, (HB 11-1043), ch. 266, pp. 1211, 1212, § § 19, 20, 22, 21, effective July 1.



Editor's note: (1) This section is similar to former § 25-1-107 (1)(jj) as it existed prior to 2003.

(2) Amendments to this section by Senate Bill 10-109 and House Bill 10-1284 were harmonized.

(3) Subsection (17)(b.5) was added as subsection (3)(c) by House Bill 10-1388. That provision was harmonized with Senate Bill 10-109 and House Bill 10-1284 resulting in its relocation.

(4) Subsection (3)(c)(II) provided for the repeal of subsection (3)(c), effective July 1, 2011. (See L. 2010, p. 1677.) Subsections (16)(b)(II) and (17)(c)(II) provided for the repeal of subsections (16)(b) and (17)(c), respectively, effective July 1, 2012. (See L. 2010, p. 1691.)

**C.R.S. 25-1.5-106**